IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.280/2006.

National Insurance Co. Ltd.
Diamond Chambers. 2nd Floor,
18th June Road, Panaji-Goa. ..... Appellant.

Versus

1. Smt. Dipti Deepak Gaonkar,
w/o late Deepak Shabaji Gaonkar
aged 31 years, housewife,
Residing at H.No.63, Wadachawada,
Sirigao-Goa.

2. Kumar Shabaji Deepak Gaonkar
12 years, Minor, studuent,
represented by natural guardian
Smt.Dipti Deepak Gaonkar,
w/o late Deepak Shabaji Gaonkar,
aged 31 years, housewife, Residing
at H.No.63,Wadachawada,
Sirigao- Goa.

3. Kum. Pooja Deepak Gaonkar,
5 years, Minor, represented
by natural guardian, Smt.Dipti
Deepak Gaonkar,w/o late Deepak
Shabaji Gaonkar,aged 31 years,
housewife, Residing at H.No.63,
Wadachawada, Sirigao- Goa. ..... Respondents.

4. Shri. Shrinivas L. Mannawaddar,
S/o. Laximan Mannawaddar,
R/o. H. No.9, Ramnagar, Dharwad
Road, Joida Taluka, Uttar Kanara,
and Presently residing at C/o Anil
Photo Studio, Agarwada, Calangute,
Bardez-Goa. (Deleted)

5. Shri. Gajanan Shankar Kerkar,
R/o. H. No.1280, Umtawado,
Calangut, Bardez- Goa.

Mr. E.Afonso, Advocate for the appellant.
Mr. R. S. Sardesai, Advocate for the respondents No. 1 to 3.

Coram :- **R. S. MOHITE, J.**

Date : - 12th October, 2007.

ORAL JUDGMENT :

Heard both sides. The Advocate for the appellant agrees to give up all points except the question of quantum which has been awarded. He points out that the impugned award it indicates that at the time of death the admitted salary of the deceased was Rs.6,203/- The Court has however, taken salary of Rs. 8,000/- per month by taking into account likely promotions and likely length of the service and career prospects. He points out that this is speculative .

He relies upon the judgment of Apex Court in the case of *Bijoy Kumar Dugar Vs. Bidya Dhar Dutta And Others, reported in 2006(3) S.C.C. 242.* Wherein, the Apex Court has held that

> *"Dependency would have to be worked on the basis of earnings of deceased at the time of accident and not on the basis of mere assertion of the claimants that he would have earned certain sum in the span of his life time cannot be accepted as legitimate unless all relevant facts are proved by leading cogent and reliable evidence before Tribunal. "*

It is obvious that the possibility of promotion is speculative. In the circumstances, the appeal is partly allowed. The compensation is to be fixed on the basis that the salary of the deceased at the time of accident which was Rs.6,203/-per month. Both the parties agree that the figure will come to Rs.7,92,880/-. This figure is arrived at by applying multiplier 16, which both the parties agree, is the correct multiplier. In

addition to this, the award grants Rs. 2,000/- towards funeral expenses, Rs. 5,000/- towards loss of consortium, Rs.10,000/- towards pain and suffering. Taking into consideration the aforesaid, the total amount payable would come to Rs.8,09,880/- which can be rounded up to Rs.8,10,000/-.

In the circumstances, appeal is partly allowed as aforesaid and it is held that the appellant along with respondent No.5 will be jointly and severally liable to pay the compensation of the amount of Rs.8,10,000/- to the respondent Nos.1, 2 & 3 and this amount will carry interest @ Rs.9 % p.a. from the date of application till the payment. The amount if any awarded U/s.140 of M.V. Act to the respondent Nos. 1, 2 & 3 , shall be adjusted against the final compensation payable under this order and from the balance, 50 % amount shall be paid to respondent No.1 being widow and balance amount shall be apportioned equally between the respondents No. 2 & 3 being minor children of the deceased. The respondent No.1 will be entitled to receive the amount payable to her but the amount awarded in favour of minor children i.e. respondents No. 2 & 3 shall be invested in two equal non cumulative three yearly fixed deposits in a nationalised bank which will be renewed till they attain the age of majority. The interest accruing on these two non cumulative fixed deposits will be payable by the Registrar to the respondent No.1 and on their attaining majority, respondent Nos. 2 & 3 will be paid equal shares by breaking the deposits if necessary.

Amount if any due under this judgment and decree will be deposited in this Court within a period of 2 weeks. On the deposit made, disbursement to be made by the registrar of this Court in accordance with this order. Appeal is disposed off in the aforesaid terms. There will

be no order as to costs.

R. S. MOHITE, J.

SMA